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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,237	08/06/2001	Pierre Rondeau	P 283091 RP-00129-US2	7574

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EXAMINER

KLEBE, GERALD B

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 03/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/922,237

Applicant(s)
Rondeau et al.

Examiner
Gerald Klebe

Art Unit
3618



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 6, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-12, 15-24, 26-36, and 39-47 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-12, 15-24, 26-36, and 39-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

G. Klebe
2 March 2003

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Amendment

1. The amendment filed 2/06/2003 under 37 CFR 1.111 has been entered. Claims 3-12, 15-24, 26-36, and 39-47 are pending in the application, claims 1-2, 13-14, 25, and 37-38 having been canceled by the amendment.

Claims Previously indicated Allowable, Now Rejected, New Art

2. The indicated allowability of claims as recited in the previous Office Action is withdrawn in view of the newly discovered reference to Gagnon et al. (US 6523634). Rejections based on the newly cited reference follow.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 3-5, 8-9, 11, 15-17, 20-21, 23, 39, 41-44, and 46-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Gagnon et al. (US 6523634 B1).

The applied reference has a common Assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the

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inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

5. Gagnon et al. discloses (**re: claims 3, 4, 15, 16, and 39**), a fender structure for a vehicle with a plurality of wheels and an all terrain vehicle with a plurality of wheels comprising (refer Figures 2, 3, 6-8, and 13): a right fender portion positionable over a right wheel; a left fender portion associated with the right fender portion and positionable over a left wheel (104 and refer col 7, lines 29-30), wherein at least one of the right fender and the left fender portion includes a support portion designed as a load-bearing surface defined in part by a top surface of at least one of the left and right fender portions (Fig 2, the tops of the fender, as shown); a storage compartment (refer col 9, lines 49-51) formed in the support portion with an opening through which item may be placed into the storage compartment; a cover (184) positionable over and sized to cover the opening; and where the fender structure includes a central support surface defined by the cover and a lateral support surface on each side of the central support surface (ref. Fig 2); and raised support portions, in at least one of a lateral, longitudinal, and diagonal direction, integrally formed in at least one to the support portion and the storage compartment (as shown in Fig 2); and wherein (**re: claim 41**) the fender structure and the built-in raised support portions are formed as a one piece unit (refer Fig 2); and comprising (**re: claim 42**) a mud guard and floor board integrally ~~forced~~ ^{joined} to the fender structure; and (**re: claims 5 and 17**) wherein the right fender, the left fender and the support portion are integrally formed as a single unit; and (**re: claims 8 and 20**) wherein a mud guard is positionable adjacent at least one to the left and right

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wheels; and a floor board extends away from the mud guard; wherein (**re: claims 9, 21**) the mud guard and the floor board are formed as a one piece unit; and further wherein (**re: claims 11, 23, and 43**) the mud guard and the floor board are formed in one piece with the right and left fender and the support portion; and wherein (**re: claim 44**) the mud guard and floor board are a first one-piece unit and the fender and the fender and built-in raised support portion are a second one piece unit..

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 26-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gagnon et al. (US 6523634 B1).

a. Gagnon et al. teach an all terrain vehicle including a plurality of wheels, the vehicle comprising (**re: claim 26**): a fender structure (104 and 112) positioned over the wheels (refer Figs 2, 3, 6-8, and 13), the fender structure including a plurality of raised support portions (as seen in Fig 2), a main frame (refer Fig 4) from which the wheels are suspended; and a bumper (Fig 3, item 35, and refer col 5, line 63) supported by the main frame, wherein the raised support portions are supported by the main frame and are not supported by the bumper (as can be seen,

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for instance, in Figs 3, 7, and 8, the bumper is separate from the raised support portions); and wherein (**re: claim 28**) the fender structure and the raised support portions are formed as a one piece unit (refer Fig 2, and Fig 6); and (**re: claim 29**) further comprising a storage compartment (col 7, lines 32-34) formed integrally with the fender structure and the raised support portions; and (**re: claim 30**) further comprising a cover (184) that is sized to cover the storage compartment; and (**re: claim 31**) wherein the fender structure includes a central support surface defined by the cover and a lateral support surface on each side of the central support surface (refer Fig 6); and wherein (**re: claim 32**) wherein the fender structure includes lateral portions on each side of the storage compartment (refer Fig 6); and wherein (**re: claim 33 and 34**) the fender structure includes at least one cross-over portion extending transverse to the lateral portions (refer Fig 6), the lateral portions and the cross-over portion defining a support plane; and wherein (**re: claim 35**) the fender structure is a rear end portion of the all terrain vehicle (Fig 2, item 112); and wherein (**re: claim 36**) the fender structure is a front end portion of the all terrain vehicle (Fig 2, item 104).

b. Gagnon et al. lacks explicit disclosure that (**re: the further limitations of the claim 26**), that the raised support portions and the fender itself are formed of a plastic material, and (**re: claim 27**) wherein the plastic material is selected from the group comprising polyethylene, polypropylene and fiberglass-charge polyethylene.

c. However, the examiner takes official notice that it is old and well-known in the automotive manufacturing arts including those involved in the manufacturing of all terrain

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vehicles to manufacture various parts of the vehicle bodies, including fenders of plastic materials of various types, including among others, polyethylene, polypropylene and fiberglass-charged polyethylene.

d. Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have manufactured the fender, including its raised support portions of plastic materials, including plastics such as polyethylene, polypropylene, and fiberglass-charged polyethylene as a matter of simple design choice based upon engineering tradeoffs of manufacturing costs versus life-cycle maintenance costs of the vehicle body, particularly the fenders.

8. Claims 6, 7, 10, 12, 18, 19, 22, 24, 27, 40 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gagnon et al. (US 6523634 B1).

Regarding the limitations of claims 6 , 10, 12, 18, 22, 24, and 45 wherein the parts are formed by one of blow-molding and injection molding, and **(re: claims 7, 19, 27, and 40)** wherein material such as polyethylene, polyurethane, and fiberglass reinforced polyethylene are the materials of which the parts are made, Gagnon is silent as to the materials and process of manufacturing the fender and associated parts. However, the examiner takes official notice that forming body parts of vehicles, including the fender structures, of any one of polyethylene, polypropylene, and fiberglass-reinforced polyethylene, and/or by using a process of blow-molding or injection molding is old and well-known in the recreational vehicle manufacturing arts.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have formed the single unit of one of the materials polyethylene, polypropylene, and fiberglass-reinforced polyethylene, and to have manufactured the part using either a blow-molding or an injection molding process as a simple design choice based upon manufacturing cost/ assembly cost/lifetime maintenance tradeoffs.


Response to Argument

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

Conclusion

10. Any inquiry concerning this or earlier communication(s) from the examiner should be directed to Gerald B. Klebe at 703-305-0578, facsimile 703-308-2571, Mon - Fri, 8:00 AM - 4:30 PM ET, or to Supervisory Patent Examiner Brian L. Johnson, Art Unit 3618, at 703-308-0885.


gbklebe / Art Unit 3618 / 2 March 2003


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3/4/03